

**Exhibit "5"**



## CULPEPPER IP, LLLC

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PATENTS, TRADEMARKS & COPYRIGHTS

Via E-mail <[sysadmins@intservers.net](mailto:sysadmins@intservers.net)>



KERRY S. CULPEPPER \*

\* ADMITTED TO PRACTICE IN VIRGINIA,  
HAWAII AND BEFORE THE USPTO

JOSHUA LEE\*\*

\*\* ADMITTED TO PRACTICE IN  
WASHINGTON AND BEFORE THE  
USPTO

April 19, 2021

Via Air Mail

Surfshark Ltd.

Vanterpool Plaza, 2nd Floor

Wickhams Cay I, Road Town, Tortola

British Virgin Islands, VG11100

Re: Copyright Infringement at Internet Protocol ("IP") addresses including but not limited to:  
45.43.14.76, 45.43.14.96, 192.111.134.213, and 198.8.80.88

My Reference: 20-0231C

Case Reference No.: 2:21-cv-251-MJP (Western District of Washington)

Dear Sir or Madam,

As explained below, I am writing to you regarding the Internet service Surfshark Ltd. ("Surfshark") provides to subscribers including but not limited to the above IP addresses ("subscribers"). Please note that these IP addresses above are shown merely to illustrate the problem. As explained more fully below, this issue extends to numerous Surfshark subscribers.

My law firm represents Rambo V Productions Inc., Millennium Funding Inc. HB Productions Inc.; Venice PI LLC; Definition Delaware LLC; Voltage Holdings LLC Hunter Killer Productions Inc.; LHF Productions Inc.; Eve Nevada, LLC and Bodyguard Productions Inc., the owners of the copyright protected motion pictures Rambo V: Last Blood, Angel Has Fallen Hellboy, Once Upon a Time in Venice, The Professor and the Madman, Extremely Shockingly Evil and Vile, Hunter Killer, London Has Fallen, Ava, and The Hitman's Bodyguard. Each of the motion pictures is an original work of art that was produced and marketed at great effort and expense of the owner.

On behalf of Eve Nevada, LLC, my law firm filed a lawsuit in the United States District Court for the Western District of Washington (currently pending as case no. 2:21-cv-251-MJP)

against an end-user with confirmed infringing activity of my client's Work. We have determined that the end-user utilized a Virtual Private Network ("VPN") service with multiple IP addresses supplied by Internet Service Providers ("ISPs") and Data Centers, such as Tier.Net and Performive, LLC (formerly "Total Server Solutions"). These IP addresses include 45.43.14.76, 45.43.14.96, 192.111.134.213, and 198.8.80.88 as described in the Complaint. We are seeking information related to the identity of the subscriber(s) issued these IP addresses. In response to subpoenas for identification information regarding these IP addresses, these ISPs and Data Centers identified Surfshark as the assigned IP address holder.

Thus, we have determined that your subscribers have repeatedly infringed the copyrights in my clients' motion pictures. Moreover, we have determined that our owners' agents have sent dozens of notices styled per the Digital Millennium Copyright Action ("DMCA") to ISPs for Surfshark, including Tier.Net and Performive, who subsequently forwarded the Notices to Surfshark concerning multiple IP addresses associated with confirmed infringing activity. However, it appears that Surfshark has failed to terminate any repeat infringers or take any meaningful actions against these subscribers in response to these notices. The number of notices sent at two exemplary IP addresses is shown below to illustrate Surfshark's lack of any meaningful action. The Internet service of neither of these accounts was terminated despite Surfshark receiving over 100 Notices between them.

IP	Notices Sent
198.8.80.88	89
192.111.134.213	18

To further illustrate a concrete example of the damage done to our clients, please refer to the activity at the subscriber at IP address 198.8.80.88. In October and November, 2019 alone, the owners' agent sent 22 Notices to Total Server Solutions, who subsequently forwarded them to Surfshark, regarding infringing activity of my clients' motion pictures including *Angel Has Fallen* and *Hunter Killer*. However, Surfshark failed to terminate this account or take any meaningful steps to prevent continuing infringing activity.

Nearly all of the file titles of the infringing copies of my clients' Works have had the copyright management information ("CMI") such as the title of the Work modified or altered to falsely include a reference to a piracy website. For example, the infringing file my clients' agent told you about in the Notice shown in Exhibit "1" has the title: "Hunter Killer (2018) [WEBRip] [1080p] [YTS.AM]". The CMI has been modified/altered to falsely refer to the notorious piracy websites YTS in violation of 17 U.S.C. §1202 ("DMCA violations"). My clients did not provide file titles that promote movie piracy websites.



**Surfshark's liability for Copyright Infringement**

The DMCA provides a safe harbor for qualified services providers from liability from copyright infringement. A requirement for this safe harbor is that the service provider reasonably implement, and inform subscribers and account holders of the service provider's system or network of, a policy that provides for the **termination** in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers. *See* 17 USC 512(i)(1)(A). Thus, Surfshark fails to qualify for the safe harbor because Surfshark has not terminated the subscriber accounts despite the multiple notifications sent by my clients' agents.

Accordingly, my clients and I believe that Surfshark may be liable for these infringements of my clients' copyrights in violation of federal law under the Copyright Act, 17 USC §501. Remedies available to my clients include: An injunction against further infringement; Actual and statutory damages of up to \$150,000/motion picture; and costs and attorney's fees.

Further, my clients and I also believe that Surfshark may be secondarily liable for its subscribers' DMCA violations under 17 U.S.C. § 1202. Remedies provided by 17 U.S.C. § 1203(c) include statutory damages up to \$25,000 per DMCA violation. For example, above I illustrated an example of a DMCA violations (YTS).

Nonetheless, my clients would like to resolve this issue outside of litigation if possible. To do so, we request that: (1) Surfshark agrees to immediately terminate all Internet service to the subscribers at the above IP addresses; (2) Surfshark agrees to take the appropriate action to terminate subscriber accounts in response to all further copyright notifications received from my clients' agent; (3) Surfshark agrees to provide customer identification information for the IP addresses where my clients' agent has confirmed infringements; (4) Surfshark blocks subscriber access to notorious piracy websites listed in the Office of the United States Trade Representative (USTR) yearly list of Notorious Markets for Counterfeiting and Piracy such as The Piratebay, Popcorn Time and YTS; and (5) Surfshark agrees pay a portion of my clients' damages.

I look forward to receiving your response by May 7, 2021 so that we can discuss this issue further. My clients would like to resolve this matter amicably but will consider any and all legal action necessary to protect their valuable intellectual property rights under federal and state law. This letter is written without prejudice to the rights and remedies of our client, all of which are expressly reserved.

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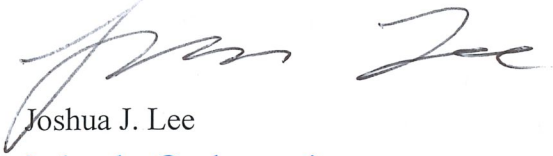
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Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua J. Lee". The signature is fluid and cursive, with the first name "Joshua" and last name "Lee" clearly distinguishable.

Joshua J. Lee

[joshua.lee@culpepperip.com](mailto:joshua.lee@culpepperip.com)

Attachment: Exhibit "1"

**joshua.lee culpepperip.com**

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**From:** notice@notices.copyrightmanagementservicesltd.com  
**Sent:** Monday, November 18, 2019 11:28 PM  
**To:** abuse@totalserversolutions.com  
**Cc:** ccbk@notices.copyrightmanagementservicesltd.com  
**Subject:** Notice of Claimed Infringement [Case No. 39307387942]

-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA1

Notice of Claimed Infringement

Notice ID: 39307387942

Notice Date: 2019-11-19 09:28:09

Dear Sir or Madam:

This message is sent on behalf of Hunter Killer Productions, Inc..

Under penalty of perjury, I assert that Copyright Management Services, Ltd. (CMS) is authorized to act on behalf of the owner of the exclusive copyrights that are alleged to be infringed herein.

Hunter Killer Productions, Inc. owns the copyrights to the movie Hunter Killer. The unauthorized download and distribution of this file by your IP address constitutes copyright infringement.

Please see below details for the infringements:

Protocol: BITTORRENT

Infringed Work: Hunter Killer

Infringing FileName: Hunter Killer (2018) [WEBRip] [1080p] [YTS.AM] Infringing FileSize: 2093184632

Infringer's IP Address: 198.8.80.88 Infringer's Port: 49444 Initial Infringement Timestamp: 2019-11-18 09:27:05

And, you're also creating a security risk on your computers, devices and networks when you download unauthorized movies or allow others to do so from your Internet connection.

We respectfully ask that you stop infringing and redistributing Hunter Killer Productions, Inc. copyright protected content, and take the proper steps to secure your Internet so that others do not infringe and redistribute our content as well.

We have a good faith belief that use of the copyrighted material detailed above is not authorized by the copyright owner, its agent, or the law. In addition, we have a good faith subjective belief that the use does not constitute fair use. The information in this notice is accurate and we state, under penalty of perjury, that we are authorized to act on behalf of the owner of the copyright that is allegedly infringed. This letter is not a complete statement of Hunter Killer Productions, Inc.'s rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights or remedies of Hunter Killer Productions, Inc. in connection with this matter, all of which are expressly reserved.

We appreciate your assistance and thank you for your cooperation in this matter.

Respectfully,

Anna Reiter  
Copyright Management Services Ltd.  
notice@notice.copyrightmanagementservicesltd.com  
Address:  
43 Berkeley Square  
London W1J 5AP  
United Kingdom

```
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  </Case>
  <Complainant>
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    <Contact>Anna Reiter</Contact>
    <Address>43 Berkeley Square London W1J 5AP United Kingdom</Address>
    <Email>notice@notices.copyrightmanagementservicesltd.com</Email>

  </Complainant>
  <Service_Provider>
    <Entity>Total Server Solutions L.L.C.</Entity>
    <Contact>DMCA - Total Server Solutions</Contact>
    <Address>34 Peachtree, Suite 400, Atlanta, GA 30303</Address>
    <Phone>1-855-227-1939</Phone>
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-----BEGIN PGP SIGNATURE-----
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